

ENTERED

February 20, 2020

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

GERARDO LOPEZ,

Petitioner,
VS.

LORIE DAVIS,

Defendant.

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CIVIL NO. 2:19-CV-112

ORDER

The Court is in receipt of the Magistrate Judge's Memorandum and Recommendation ("M&R"), Dkt. No. 23. The Court is also in receipt of Gerardo Lopez's ("Lopez") Objections, Dkt. Nos. 25, 26, 27. For the reasons below, the Court **ADOPTS** the M&R in its entirety. Dkt. No. 23.

I. M&R

The M&R recommends granting Respondents motion for summary judgment in part and dismissing Lopez's 28 U.S.C. § 2254 petition as unexhausted. Dkt. No. 23 at 7. The M&R also recommends denying any request for a Certificate of Appealability. *Id.* In his objections, Gerardo Lopez provides numerous documents regarding his attempts to contact his attorney, his attorney's alleged ineffective representation and Lopez's attempt to appeal his state case. Dkt. Nos. 25, 26. Lopez also provides numerous legal citations. Dkt. No. 27.

The Court reviews objected-to portions of a Magistrate Judge's proposed findings and recommendations de novo. 28 U.S.C. § 636(b)(1). But if the objections are frivolous, conclusive or general in nature the court need not conduct a de novo review. *Battle v. United States Parole Comm'n*, 834 F.2d 419 (5th Cir. 1987).

Here, none of Lopez's objections relate to the Magistrate Judge's recommendation to dismiss the case for lack of exhaustion in state court. *See* Dkt. Nos. 25, 26, 27. As the M&R states: "To the extent that Lopez seeks to raise claims either on the merits of his conviction and sentence or of ineffective assistance of

counsel, he must first raise them in an Article 11.07 application in state court.” Dkt. No. 23 at 6. Accordingly, the Court concludes Lopez’s objections are frivolous. *See* Dkt. Nos. 25, 26, 27; *Battle*, 834 F.2d 419.

II. Conclusion

After independently viewing the record and the applicable law, the Court **ADOPTS** the Memorandum and Recommendation, Dkt. No. 23, in its entirety. The Court **OVERRULES** Lopez’s objections, Dkt. Nos. 25, 26, 27. The Court hereby:

- **GRANTS IN PART** Respondent’s motion for summary judgment, Dkt. No. 19, and **DISMISSES WITHOUT PREJUDICE** Lopez’s § 2254 petition for lack of exhaustion.
- **DENIES** any request for a Certificate of Appealability.

The Court will direct entry of final judgment separately.

SIGNED this 19th day of February, 2020.

A handwritten signature in black ink, appearing to read 'Hilda Tagle', written over a horizontal line.

Hilda Tagle
Senior United States District Judge